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13 Attorneys for Defendant/Counterclaimant  
*Midwest Industrial Supply, Inc.*

**UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF ARIZONA**

17 SOILWORKS, LLC, an Arizona corporation,

NO.: 2:06-CV-2141-DGC

18 Plaintiff / Counterdefendant /  
19 Counterclaimant,

## **MIDWEST INDUSTRIAL SUPPLY, INC.'S PROPOSED JURY VERDICT FORMS**

21 MIDWEST INDUSTRIAL SUPPLY,  
22 INC., an Ohio corporation authorized to do  
business in Arizona,

23                   Defendant / Counterclaimant /  
Counterdefendant.

As part of the Court's October 16, 2008 Order (ECF Docket No. 135), the Court requested that the parties jointly file jury verdict forms. The parties were unable to agree on one set of proposed jury verdict forms. Thus, the parties decided to each submit their own version of the requested proposed verdict forms. According to the Court's October

1 16, 2008 Order, the Court's requested verdict forms should "clearly identify the issues to  
2 be decided by the jury." Midwest Industrial Supply, Inc. asserts that its proposed jury  
3 verdict forms comply with the Court's Order and respectfully submits the following.  
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**VERDICT FORM # 1**

2

**Soilworks' False Advertising Cause of Action**

3     1a.   Do you find by the greater weight of the evidence that Midwest advertised a false  
4 or misleading statement of fact about Soilworks or Soilworks' products which deceived  
5 Soilworks' customers and injured Soilworks?

6

7                Yes                    No

8

9     1b.   If you answered "Yes" to 1a, do you find by clear and convincing evidence that  
10 Midwest made the statements in bad faith?

11

12               Yes                    No

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Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

Please proceed to Verdict Form #2.

## **VERDICT FORM #2**

## **Midwest's False Advertising Cause of Action**

Yes

No

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Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

## Foreperson

Please proceed to Verdict Form #3.

## **VERDICT FORM #3**

## **Midwest's Trademark Infringement Cause of Action**

3a. Do you find that Soilworks willfully or deliberately infringed Midwest's Soil-Sement® trademark entitling Midwest to monetary relief?

Yes  No

3b. If your answer is "Yes" to 3a, please indicate the amount of damages Midwest is entitled to:

10 Actual Damages \$ \_\_\_\_\_  
Soilworks' Profits \$ \_\_\_\_\_

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Juror 1

Juror 7

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Juror 2

Juror 8

Juror 3

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Juror 9

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Juror 4

Juror 10

Juror 5

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Juror 11

Juror 6

Foreperson

Please proceed to Verdict Form #4.

## **VERDICT FORM #4**

## **Midwest's Patent Infringement Cause of Action**

Claim 1 of U.S. Patent No. 7,074,266

4a. Do you find by the greater weight of the evidence that Soilworks' Durasoil product contains a synthetic isoalkane?

Yes

No

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Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

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Juror 10

Juror 5

Juror 11

Juror 6

Forepers

If your answer is "Yes" to 4a, please proceed to Question 4b.

If your answer is "No" to 4a, please proceed to Verdict Form #5.

1           4b. Do you find by the greater weight of the evidence that Soilworks' Durasoil product  
2           contains a binder that is a carboxylic acid, an ester or a thermoplastic polyolefin?  
3

4                 \_\_\_\_ Yes

5                 \_\_\_\_ No

6

7                 \_\_\_\_ Juror 1

8

9                 \_\_\_\_ Juror 7

10                 \_\_\_\_ Juror 2

11                 \_\_\_\_ Juror 8

12                 \_\_\_\_ Juror 3

13                 \_\_\_\_ Juror 9

14                 \_\_\_\_ Juror 4

15                 \_\_\_\_ Juror 10

16                 \_\_\_\_ Juror 5

17                 \_\_\_\_ Juror 11

18                 \_\_\_\_ Juror 6

19                 \_\_\_\_ Foreperson

20                 Please proceed to Question 4c.

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1       4c. Do you find by the greater weight of the evidence that Soilworks' Durasoil product  
2       contains an ingredient that is *equivalent* to a binder and is a carboxylic acid, an ester or a  
3       thermoplastic polyolefin?  
4

5                          \_\_\_\_ Yes

6                          \_\_\_\_ No

7                          \_\_\_\_ Juror 1

8                          \_\_\_\_ Juror 7

9                          \_\_\_\_ Juror 2

10                         \_\_\_\_ Juror 8

11                         \_\_\_\_ Juror 3

12                         \_\_\_\_ Juror 9

13                         \_\_\_\_ Juror 4

14                         \_\_\_\_ Juror 10

15                         \_\_\_\_ Juror 5

16                         \_\_\_\_ Juror 11

17                         \_\_\_\_ Juror 6

18                         \_\_\_\_ Foreperson

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20       If your answers are "Yes" to **either** 4b **or** 4c, please proceed to Question 4d.  
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23       If your answers are "No" to **both** 4b **and** 4c, then please proceed to Verdict Form #5.  
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**Claim 7 of U.S. Patent No. 7,074,266**

4d. Do you find by the greater weight of the evidence that Soilworks' Durasoil product's synthetic isoalkane is a synthetic or semi-synthetic hydrocarbon?

Yes

No

Juror 1

Juror 7

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Juror 2

Juror 8

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Juror 3

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Juror 9

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Juror 4

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Juror 10

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Juror 5

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Juror 11

Juror 6

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**Foreperson**

If your answer is “Yes” to 4d, please proceed to Question 4e.

If your answer is “No” to 4d, please proceed to Question 4g (damages).

1           Claim 8 of U.S. Patent No. 7,074,266

2       4e. Do you find by the greater weight of the evidence that Soilworks' Durasoil product's  
3       synthetic isoalkane is produced from either hydrotreating, hydrocracking or  
4       hydroisomerization?

5                          \_\_\_\_ Yes

6                          \_\_\_\_ No

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8

9                          \_\_\_\_ Juror 1

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11                          \_\_\_\_ Juror 7

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17                          \_\_\_\_ Juror 3

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19                          \_\_\_\_ Juror 9

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21                          \_\_\_\_ Juror 4

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23                          \_\_\_\_ Juror 10

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25                          \_\_\_\_ Juror 5

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27                          \_\_\_\_ Juror 11

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29                          \_\_\_\_ Juror 6

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31                          \_\_\_\_ Foreperson

32       Please proceed to Question 4f.

Claim 9 of U.S. Patent No. 7,074,266

4f. Do you find by the greater weight of the evidence that Soilworks' Durasoil product contains isoalkanes or branched iso-paraffins?

Yes

No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

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Juror 4

Juror 10

Juror 11

Please proceed to Question 4g

4g. Damages for Patent Infringement of U.S. Patent No. 7,074,266

Your answers above found Soilworks' Durasoil product infringes at least one claim of Midwest's U.S. Patent No. 7,074,266. You now need to indicate the amount of damages that Midwest is entitled to for Soilworks' infringement of Midwest's Patent No. 7,074,266. Your response below should indicate either lost profits to Midwest in a lump sum or a reasonable royalty, not both. At a minimum, you must determine a reasonable royalty as a percentage of Soilworks' sales of its Durasoil product.

Please indicate the amount of damages Midwest is entitled to for Soilworks' infringement of Midwest's U.S. Patent, No. 7,074,266:

- (i) Lost Profits \$ \_\_\_\_\_ or  
(ii) Reasonable Royalty \_\_\_\_\_% (percentage of Soilworks' Durasoil product sales)

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

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Juror 4

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Juror 10

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Juror 5

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Juror 11

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Juror 6

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**Foreperson**

Please proceed to Question 4h.

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2 Claim 3 of U.S. Patent No. 7,081,270

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4h. Do you find by a greater weight of the evidence that Durasoil is applied neat to the  
5 surface soil?

6        Yes

7        No

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9 Juror 1

Juror 7

10 Juror 2

Juror 8

11 Juror 3

Juror 9

12 Juror 4

Juror 10

13 Juror 5

Juror 11

14 Juror 6

Foreperson

15 Please proceed to Question 4i.

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1       4i.     Damages for Patent Infringement of U.S. Patent No. 7,081,270.

2       Your answers above found Soilworks' Durasoil product infringes at least one claim of  
3       Midwest's U.S. Patent No. 7,081,270. You now need to indicate the amount of damages  
4       that Midwest is entitled to for Soilworks' infringement of Midwest's Patent No.  
5       7,081,270. Your response below should indicate either lost profits to Midwest in a lump  
6       sum or a reasonable royalty, not both. At a minimum, you must determine a reasonable  
7       royalty as a percentage of Soilworks' sales of its Durasoil product.  
8

9  
10      Please indicate the amount of damages Midwest is entitled to for Soilworks' infringement  
11      of Midwest's U.S. Patent, No. 7,081,270:

12            (i)     Lost Profits           \$ \_\_\_\_\_ or

13            (ii)    Reasonable Royalty   \_\_\_\_\_ % (percentage of Soilworks' Durasoil  
14       product sales)

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16       \_\_\_\_\_  
17      Juror 1

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42      Juror 6

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44       \_\_\_\_\_  
45      Foreperson

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47      Please proceed to Verdict Form #5.

## **VERDICT FORM #5**

## **Midwest's Unjust Enrichment Cause of Action**

5a. Do you find by the greater weight of the evidence that Soilworks was unjustly enriched by its business practices to the detriment of Midwest?

Yes  No

5b. If your answer is "Yes" to 5a, please indicate the amount of Soilworks' unjust enrichment:

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Juror 1

Juror 7

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Juror 2

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Juror 8

Juror 3

Juror 9

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Juror 4

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Juror 10

Juror 5

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Juror 11

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Juror 6

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### Foreperson

Respectfully Submitted,

By: /s/ John M. Skeriotis  
Craig A. Marvinney, 0004951 (OH)  
John M. Skeriotis, 0069263 (OH)  
Anastasia J. Wade, 0082797 (OH)  
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jskeriotis@brouse.com,  
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*Attorneys for Defendant/Counterclaimant  
Midwest Industrial Supply, Inc.*

1  
2                   **CERTIFICATE OF SERVICE**  
3

4       The undersigned hereby certifies that a copy of the foregoing **MIDWEST**  
5       **INDUSTRIAL SUPPLY, INC.'S PROPOSED JURY VERDICT FORMS** has been  
6       electronically filed on this 9th day of January, 2009. Notice of this filing will be sent to all  
7       parties by operation of the Court's electronic filing system. Parties may access this filing  
8       through the Court's system.

9                   /s/ John M. Skeriotis  
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